

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jun 08, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NIA D.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

NO: 4:21-CV-5109-RMP

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

BEFORE THE COURT, without oral argument, are cross-motions for summary judgment from Plaintiff Nia D.<sup>1</sup> ECF No. 10, and Defendant the Commissioner of Social Security (the "Commissioner"), ECF No. 14. Plaintiff seeks judicial review, pursuant to 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3), of the Commissioner's denial of her claim for Social Security Disability Insurance

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<sup>1</sup> In the interest of protecting Plaintiff's privacy, the Court uses Plaintiff's first name and last initial.

1 Benefits (“DIB”) and Social Security Income (“SSI”) under Titles II and XVI of the  
2 Social Security Act (the “Act”). *See* ECF No. 10 at 1–2. Plaintiff did not reply to  
3 the Commissioner’s Motion.

4 Having considered the parties’ motions, the administrative record, and the  
5 applicable law, the Court is fully informed. For the reasons set forth below, the  
6 Court grants summary judgment in favor of the Commissioner.

## 7 BACKGROUND

### 8 *General Context*

9 Plaintiff was born in 1990 and applied for DIB and SSI on approximately  
10 October 23, 2019, alleging disability beginning on April 1, 2014. Administrative  
11 Record (“AR”)<sup>2</sup> 250. Plaintiff asserts that she is a male-to-female transgender  
12 woman who suffers from depression, anxiety, attention deficit disorder, and  
13 borderline personality disorder and is unable to work due to her mental health  
14 impairments. *See* AR 257–58, 265; *see also* ECF No. 10 at 2. The application was  
15 denied initially and upon reconsideration, and Plaintiff requested a hearing. *See* AR  
16 173–86.

17 On March 9, 2021, Plaintiff appeared at a hearing, represented by attorney  
18 Chad Hatfield, before Administrative Law Judge (“ALJ”) Mark Kim in Spokane,

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19 <sup>2</sup> The AR is filed at ECF No. 10.  
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1 Washington. AR 44–46. Due to the exigencies of the COVID-19 pandemic,  
2 Plaintiff and her counsel appeared telephonically. AR 41–42. The ALJ also heard  
3 telephonically from vocational expert Thomas Weiford. AR 72–79. Plaintiff and  
4 Mr. Weiford responded to questions from ALJ Kim and counsel. AR 17–30.  
5 Plaintiff amended her alleged onset date to October 21, 2015. AR 51.

6 ***ALJ's Decision***

7 On April 12, 2021, ALJ Kim issued an unfavorable decision. AR 15–28.  
8 Applying the five-step evaluation process, ALJ Kim found:

9 **Step one:** Plaintiff meets the insured status requirements of the Social  
10 Security Act through September 30, 2023, and Plaintiff has not engaged in  
11 substantial gainful activity since October 21, 2015, the amended alleged onset date.  
12 AR 20.

13 **Step two:** Plaintiff has the following severe impairments that are medically  
14 determinable and significantly limit her ability to perform basic work activities:  
15 major depressive disorder; generalized anxiety disorder; borderline personality  
16 disorder; and cannabis use disorder, under 20 C.F.R. §§ 404.1520(c) and 416.920(c).  
17 AR 20. The ALJ further found that attention deficit hyperactivity disorder  
18 (“ADHD”), gender dysphoria, and posttraumatic stress disorder (“PTSD”) were non-

1 severe impairments that would have no more than a minimal effect on Plaintiff's  
2 ability to perform basic work activities. AR 20–21.

3 **Step three:** The ALJ concluded that Plaintiff does not have an impairment or  
4 combination of impairments that meets or medically equals the severity of one of the  
5 listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R.  
6 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). AR 21.

7 **Residual Functional Capacity (“RFC”):** The ALJ found that Plaintiff had  
8 the RFC to: perform simple, routine, tasks with a reasoning level of 2 or less; work  
9 involving occasional job-related decision making and only occasional and simple  
10 changes; work not involving fast-paced type work; and work involving no  
11 interaction with the public and only occasional and superficial interaction with  
12 coworkers. AR 23.

13 In determining Plaintiff's RFC, the ALJ found that Plaintiff's statements  
14 concerning the intensity, persistence, and limiting effects of her alleged symptoms  
15 “are not entirely consistent with the medical evidence and other evidence in the  
16 record” for several reasons that the ALJ discussed. AR 24.

17 **Step four:** The ALJ found that Plaintiff has past relevant work as a credit card  
18 clerk and call center worker. AR 28. The ALJ relied on the VE's testimony to find  
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1 that Plaintiff is unable to perform her past relevant work as actually or generally  
2 performed. AR 28.

3 **Step five:** The ALJ found that Plaintiff has a high school education; was 25  
4 years old on her alleged disability onset date, which is defined as a younger  
5 individual (age 18-49); and that transferability of job skills is not material to the  
6 determination of disability because the application of the Medical-Vocational  
7 Guidelines to Plaintiff's case supports a finding that Plaintiff is "not disabled,"  
8 whether or not Plaintiff has transferable job skills. AR 28–29. The ALJ found that  
9 there are jobs that exist in significant numbers in the national economy that Plaintiff  
10 can perform considering her age, education, work experience, and RFC. AR 29.  
11 Specifically, the ALJ recounted that the VE identified the following representative  
12 occupations that Plaintiff would be able perform with the RFC: Warehouse Worker,  
13 Janitor, and Industrial Cleaner. AR 29. The ALJ concluded that Plaintiff had not  
14 been disabled within the meaning of the Social Security Act from October 21, 2015,  
15 through the date of the ALJ's decision. AR 30.

16 The Appeals Council denied review. AR 1–6.

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## LEGAL STANDARD

### *Standard of Review*

Congress has provided a limited scope of judicial review of the Commissioner's decision. 42 U.S.C. § 405(g). A court may set aside the Commissioner's denial of benefits only if the ALJ's determination was based on legal error or not supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985) (citing 42 U.S.C. § 405(g)). "The [Commissioner's] determination that a claimant is not disabled will be upheld if the findings of fact are supported by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975); *McCallister v. Sullivan*, 888 F.2d 599, 601–02 (9th Cir. 1989). Substantial evidence "means such evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch inferences and conclusions as the [Commissioner] may reasonably draw from the evidence" also will be upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as a whole, not just the evidence supporting the decisions of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989).

1 A decision supported by substantial evidence still will be set aside if the  
2 proper legal standards were not applied in weighing the evidence and making a  
3 decision. *Browner v. Sec’y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir.  
4 1988). Thus, if there is substantial evidence to support the administrative findings,  
5 or if there is conflicting evidence that will support a finding of either disability or  
6 nondisability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*,  
7 812 F.2d 1226, 1229–30 (9th Cir. 1987).

### 8 ***Definition of Disability***

9 The Social Security Act defines “disability” as the “inability to engage in any  
10 substantial gainful activity by reason of any medically determinable physical or  
11 mental impairment which can be expected to result in death or which has lasted or  
12 can be expected to last for a continuous period of not less than 12 months.” 42  
13 U.S.C. §§ 423(d)(1)(A). The Act also provides that a claimant shall be determined  
14 to be under a disability only if her impairments are of such severity that the claimant  
15 is not only unable to do her previous work, but cannot, considering the claimant’s  
16 age, education, and work experiences, engage in any other substantial gainful work  
17 which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A). Thus, the  
18 definition of disability consists of both medical and vocational components. *Edlund*  
19 *v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

1           ***Sequential Evaluation Process***

2           The Commissioner has established a five-step sequential evaluation process  
3 for determining whether a claimant is disabled. 20 C.F.R. §§ 416.920, 404.1520.  
4 Step one determines if he is engaged in substantial gainful activities. If the claimant  
5 is engaged in substantial gainful activities, benefits are denied. 20 C.F.R. §§  
6 416.920(a)(4)(i), 404.1520(a)(4)(i).

7           If the claimant is not engaged in substantial gainful activities, the decision  
8 maker proceeds to step two and determines whether the claimant has a medically  
9 severe impairment or combination of impairments. 20 C.F.R. §§ 416.920(a)(4)(ii),  
10 404.1520(a)(4)(ii). If the claimant does not have a severe impairment or combination  
11 of impairments, the disability claim is denied.

12           If the impairment is severe, the evaluation proceeds to the third step, which  
13 compares the claimant's impairment with listed impairments acknowledged by the  
14 Commissioner to be so severe as to preclude any gainful activity. 20 C.F.R. §§  
15 416.920(a)(4)(iii), 404.1520(a)(4)(iii); *see also* 20 C.F.R. § 404, Subpt. P, App. 1. If  
16 the impairment meets or equals one of the listed impairments, the claimant is  
17 conclusively presumed to be disabled.

18           If the impairment is not one conclusively presumed to be disabling, the  
19 evaluation proceeds to the fourth step, which determines whether the impairment  
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1 prevents the claimant from performing work that he has performed in the past. If the  
2 claimant can perform her previous work, the claimant is not disabled. 20 C.F.R. §§  
3 416.920(a)(4)(iv), 404.1520(a)(4)(iv). At this step, the claimant's RFC assessment  
4 is considered.

5 If the claimant cannot perform this work, the fifth and final step in the process  
6 determines whether the claimant is able to perform other work in the national  
7 economy considering her residual functional capacity and age, education, and past  
8 work experience. 20 C.F.R. §§ 416.920(a)(4)(v), 404.1520(a)(4)(v); *Bowen v.*  
9 *Yuckert*, 482 U.S. 137, 142 (1987).

10 The initial burden of proof rests upon the claimant to establish a prima facie  
11 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th  
12 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden  
13 is met once the claimant establishes that a physical or mental impairment prevents  
14 him from engaging in her previous occupation. *Meanel*, 172 F.3d at 1113. The  
15 burden then shifts, at step five, to the Commissioner to show that (1) the claimant  
16 can perform other substantial gainful activity, and (2) a "significant number of jobs  
17 exist in the national economy" which the claimant can perform. *Kail v. Heckler*, 722  
18 F.2d 1496, 1498 (9th Cir. 1984).

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## ISSUES ON APPEAL

The parties' motions raise the following issues regarding the ALJ's decision:

1. Did the ALJ erroneously assess the medical opinion evidence?
2. Did the ALJ err at step three in finding that Plaintiff's impairments did not satisfy all of the requirements of Listings 12.04, 12.06?
3. Did the ALJ erroneously assess Plaintiff's subjective symptom complaints?
4. Did the ALJ err in formulating the RFC and making vocational findings at step five?

### *Medical Opinion Testimony*

Plaintiff maintains that all eight medical professionals who evaluated Plaintiff assessed limitations precluding competitive employment, and the ALJ "erred by arbitrarily replacing these disabling findings with his own lay opinion—by both improperly rejecting several disabling opinions and failing to translate the disabling limitations from other opinions to the RFC." ECF No. 10 at 2–3.

Plaintiff argues that the ALJ erred in his evaluation of the eight medical opinions, from Terilee Wingate, PhD; David T. Morgan, PhD; NK Marks, PhD; Aaron Burdge, PhD; and Holly Petaja, PhD; Eugene Kester, MD; Jon Anderson, PhD; and Kristin McMurray, ARNP. The Commissioner contends that the ALJ

1 reasonably evaluated the medical source opinions under the framework provided by  
2 the revised regulations. ECF No. 14 at 6–7 (citing 20 C.F.R. §§ 404.1520c,  
3 416.920c (2017)).

4       The regulations that took effect on March 27, 2017, provide a new framework  
5 for the ALJ’s consideration of medical opinion evidence and require the ALJ to  
6 articulate how persuasive he finds all medical opinions in the record, without any  
7 hierarchy of weight afforded to different medical sources. *See Rules Regarding the*  
8 *Evaluation of Medical Evidence*, 82 Fed. Reg. 5844-01, 2017 WL 168819 (Jan. 18,  
9 2017); 20 C.F.R. § 404.1520c. Instead, for each source of a medical opinion, the  
10 ALJ must consider several factors, including supportability, consistency, the  
11 source’s relationship with the claimant, any specialization of the source, and other  
12 factors such as the source’s familiarity with other evidence in the claim or an  
13 understanding of Social Security’s disability program. 20 C.F.R. § 404.1520c(c).

14       Supportability and consistency are the “most important” factors, and the ALJ  
15 must articulate how he considered those factors in determining the persuasiveness of  
16 each medical opinion or prior administrative medical finding. 20 C.F.R. §  
17 404.1520c(b)(2). With respect to these two factors, the regulations provide that an  
18 opinion is more persuasive in relation to how “relevant the objective medical  
19 evidence and supporting explanations presented” and how “consistent” with  
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1 evidence from other sources the medical opinion is. 20 C.F.R. § 404.1520c(c)(1).

2 The ALJ may explain how he considered the other factors, but is not required to do

3 so, except in cases where two or more opinions are equally well-supported and

4 consistent with the record. 20 C.F.R. § 404.1520c(b)(2), (3). Courts also must

5 continue to consider whether the ALJ's finding is supported by substantial evidence.

6 *See* 42 U.S.C. § 405(g) (“The findings of the Commissioner of Social Security as to

7 any fact, if supported by substantial evidence, shall be conclusive . . .”).

8 Prior to issuance of the new regulations, the Ninth Circuit required an ALJ to

9 provide clear and convincing reasons to reject an uncontradicted treating or

10 examining physician's opinion and provide specific and legitimate reasons where the

11 record contains a contradictory opinion. *See Revels v. Berryhill*, 874 F.3d 648, 654

12 (9th Cir. 2017). Recently, the Ninth Circuit held that the Social Security regulations

13 revised in March 2017 are “clearly irreconcilable with [past Ninth Circuit] caselaw

14 according special deference to the opinions of treating and examining physicians on

15 account of their relationship with the claimant.” *Woods v. Kijakazi*, No. 21-35458,

16 2022 U.S. App. LEXIS 10977, at \*14 (9th Cir. Apr. 22, 2022). The Ninth Circuit

17 continued that the “requirement that ALJs provide ‘specific and legitimate reasons’

18 for rejecting a treating or examining doctor's opinion, which stems from the special

1 weight given to such opinions, is likewise incompatible with the revised  
2 regulations.” *Id.* at \*15 (internal citation omitted).

3 Accordingly, as Plaintiff’s claim was filed after the new regulations took  
4 effect, the Court refers to the standard and considerations set forth by the revised  
5 rules for evaluating medical evidence. *See* AR 17.

6 **Terilee Wingate, PhD**

7 Plaintiff argues the ALJ erred in purporting to find examining psychologist  
8 Dr. Wingate’s disabling opinion persuasive, but “fail[ing] to address the fact that  
9 [Plaintiff] would suffer interruptions from anxiety, depressed mood, and social  
10 discomfort throughout the workday and workweek.” ECF No. 10 at 9. Plaintiff  
11 adds that the ALJ failed to address Plaintiff’s tendency to withdraw when  
12 overwhelmed, which Plaintiff argues, at the least, supports remand for further  
13 consideration of Dr. Wingate’s opinion. *Id.* However, Plaintiff argues that remand  
14 for benefits is supported because “vocational expert testimony confirms that the  
15 need for unscheduled breaks or off-task behavior occurring just 15% of the time  
16 precludes competitive employment.” *Id.*

17 The Commissioner responds that the ALJ addressed Plaintiff’s limitations in  
18 attention and stress by formulating the RFC to include only occasional decision  
19 making, occasional and simple changes, no fast-paced work, no interaction with the  
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1 public, and simple, routine tasks rather than complex tasks. ECF No. 14 at 9. The  
2 Commissioner argues that the ALJ adequately addressed Dr. Wingate’s opinion  
3 related to difficulty sustaining concentration and tendency to withdraw because  
4 those limitations are a result of poor stress tolerance. *Id.* at 9–10.

5 Dr. Wingate examined Plaintiff by telehealth, due to the COVID-19  
6 pandemic, on June 10, 2020, and opined that Plaintiff “can understand, remember  
7 and learn simple and some complex tasks.” AR 769. Dr. Wingate continued:

8 She has difficulty sustaining attention to tasks throughout a daily or  
9 weekly work schedule without interruption from anxiety, depressed  
10 mood, and social discomfort. She has poor stress tolerance at this time  
11 and when pressures are placed upon her, she will withdraw. She has  
12 sufficient judgment to avoid hazards and make work decisions. She can  
probably work with a supervisor and a few coworkers, although she  
reported that she is sensitive to criticism of others and this could impact  
her behavior at work. She would not work well with a lot of coworkers  
or the general public. If granted funds she appears capable.

13 AR 769.

14 The ALJ found Dr. Wingate’s opinion “substantially persuasive because it is  
15 generally consistent with the medical evidence of record except the medical  
16 evidence of record does not support the ability to perform complex tasks.” AR 26.  
17 The ALJ further found that his RFC “appropriately addresses limits of attention and  
18 stress by requiring only occasional decision making, occasional and simple changes,  
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1 no fast-paced work, and no interaction with the public. It limits the claimant to  
2 simple, routine tasks rather than complex tasks.” AR 26.

3 Under its prior “clear and convincing reasons” standard, the Ninth Circuit has  
4 held that an ALJ need not provide clear and convincing reasons for rejecting a  
5 medical opinion that does not conflict with an ALJ’s RFC. *Krampitz v. Saul*, 853 F.  
6 App’x 99, 102 (9th Cir. 2021) (citing *Turner v. Comm’r Soc. Sec. Admin.*, 613 F.3d  
7 1217, 1223 (9th Cir. 2010) (concluding that an ALJ did not need to provide clear  
8 and convincing reasons for rejecting a medical opinion that did not identify any  
9 specific limitations or conflict with the ALJ’s RFC determination)); *see also Meanel*  
10 *v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999) (“Clear and convincing reasons are not  
11 required, however, when there is no conflict.”).

12 The ALJ’s RFC was more restrictive than Dr. Wingate’s opinion with respect  
13 to Plaintiff’s ability to complete complex tasks. *Compare* AR 769 (opining that  
14 Plaintiff can complete “some complex tasks”) *with* AR 23 (RFC limiting Plaintiff to  
15 “simple, routine, tasks with a reasoning level of 2 or less”). Dr. Wingate opined that  
16 Plaintiff would experience “difficulty sustaining attention to tasks,” and the Court  
17 notes that the RFC limits Plaintiff to no fast-paced work and only simple, routine  
18 tasks. *See* ECF No. 10 at 9; AR 769. The Court does not find that Plaintiff has  
19 identified any specific conflict between Dr. Wingate’s opinion regarding attention  
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1 difficulty and the RFC. In addition, Plaintiff argues that the ALJ failed to address  
2 Plaintiff's tendency to withdraw when overwhelmed. ECF No. 10 at 9. However,  
3 the RFC includes several limitations that relate to, and arguably address, Plaintiff  
4 becoming overwhelmed in certain situations. *See* AR 23. Again, the Court cannot  
5 identify any conflict between the RFC and Dr. Wingate's opinion. Therefore, the  
6 Court finds no error in ALJ Kim's treatment of Dr. Wingate's opinion.

7 **David T. Morgan, PhD**

8 Plaintiff argues the ALJ erred his assessment of examining psychologist's  
9 opinions based on a September 19, 2019 psychological evaluation of Plaintiff. ECF  
10 No. 10 at 9–10. Plaintiff maintains that the ALJ misinterpreted the record when he  
11 rejected Dr. Morgan's opinions for lack of mental status findings, a ten-month  
12 duration, and Plaintiff's 2019 employment. *Id.* at 10 (citing AR 27). Plaintiff  
13 continues that "the ALJ ignores the fact that [Plaintiff's] alleged onset date is  
14 October 21, 2015, thus another 10 months from September 19, 2019, is well past the  
15 12-month durational requirement—which is also just a step two hurdle." *Id.*  
16 Plaintiff asserts that she does not deny that she engaged in irregular work, only that  
17 she has not had regular employment since 2018. *Id.* (citing *Lester v. Chater*, 81 F.3d  
18 821, 833 (9th Cir. 1995) ("Occasional symptom-free periods—and even the sporadic  
19 ability to work—are not inconsistent with disability.")). In addition, Plaintiff  
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1 maintains that Dr. Morgan supported his opinion with clinical findings, including  
2 that Plaintiff had moderate to marked depression, anxiety, and borderline  
3 personality, with daily frequency of symptoms.

4 The Commissioner responds that Plaintiff appeared “depressed but . . . within  
5 normal limits in though [sic] process and content, orientation, perception, memory,  
6 fund of knowledge, concentration, abstract thought, and insight and judgement  
7 [sic].” ECF No. 14 at 13 (citing AR 495–96). The Commissioner contends that the  
8 ALJ legitimately considered Plaintiff’s 2019 work for Parker Staffing Services and  
9 Asurian Insurance Services in 2019 because and ALJ may consider even part-time  
10 work in determining whether a claimant is disabled. *Id.* (citing *Ford v. Saul*, 950  
11 F.3d 1141, 1156 (9th Cir. 2020)). The Commissioner asserts that consistency with  
12 other evidence is one of the most important factors in assessing medical source  
13 opinions, and Dr. Morgan’s moderate and marked limitation opinion was  
14 inconsistent with Plaintiff’s ability to work that same year. *Id.* (citing 20 C.F.R. §§  
15 404.1520c(b)(2), 416.920c(b)(2)).

16 Dr. Morgan completed a psychological evaluation of Plaintiff for the  
17 Washington State Department of Social and Health Services (“DSHS”) on  
18 September 19, 2019. AR 492. Dr. Morgan made clinical findings of symptoms of  
19 depression, anxiety, and borderline personality, and found that Plaintiff’s symptoms  
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1 were moderately to markedly severe for each condition. AR 493. However, Dr.  
2 Morgan's mental status examination noted that Plaintiff was well groomed, had a  
3 cooperative attitude, displayed normal speech and affect, and that her thought  
4 process, orientation, perception, memory, fund of knowledge, concentration, abstract  
5 thought, insight, and judgment all were within normal limits. AR 496. Plaintiff's  
6 mood was the only observation detail that Dr. Morgan noted to be outside of normal  
7 limits, as "depressed." AR 495–96. Nevertheless, Dr. Morgan opined that Plaintiff  
8 was moderately limited in nine basic work activities and markedly limited in three.  
9 AR 494. Dr. Morgan indicated that the "length of time [Plaintiff] will be impaired  
10 with available treatment" was ten months. AR 495.

11 The ALJ found Dr. Morgan's unpersuasive as follows:

12 The opinion of David T. Morgan, Ph.D., for DSHS . . . is unpersuasive  
13 because it is not durational for a period of 12 continuous months as  
14 required by the Regulations. Dr. Morgan opined the claimant's would  
15 be impaired for only 10 months. Reviewing psychologist for DSH [sic],  
16 Holly Petaja, Ph.D., adjusted the duration to 12 months, but opined  
17 onset of September 19, 2019. Dr. Morgan reported mental status  
18 evaluation revealed depressed mood and normal results in all other  
19 areas including thought processes, orientation, memory, perception,  
20 fund of knowledge, concentration, insight, and judgement. Moreover,  
21 Dr. Morgan's opinion of marked limitation in the claimant's ability to  
perform activities within a schedule, maintain regular attendance, and  
be punctual; communicate and perform effectively in a work setting;  
and complete a normal workday/workweek is inconsistent with the  
record, which shows earnings at the time of the September 19, 2019  
evaluation (e.g. Asurion Insurance Services). The claimant told Dr.  
Morgan she had not had regular employment since 2018, but the

1 earnings record shows employment during the 2nd and 3rd quarters of  
2 2019.

3 AR 27 (internal citations omitted).

4 With respect to duration, to be disabling, an impairment must last for at least  
5 twelve months or cause death. *See* 42 U.S.C. §§ 423(d)(1)(A), 20 C.F.R. §  
6 404.1509. Plaintiff argues that “the ALJ ignores the fact that [Plaintiff’s] alleged  
7 onset date is October 21, 2015, thus another 10 months from September 19, 2019, is  
8 well past the 12-month durational requirement—which is also just a step two  
9 hurdle.” ECF No. 10 at 10. However, Plaintiff’s argument contains false  
10 assumptions, as Dr. Morgan’s evaluation does not establish that Plaintiff’s  
11 symptoms commenced on October 21, 2015, and, more critically, Dr. Morgan does  
12 not specify in his evaluation when the ten months of impairment that he assessed  
13 began or would end. *See* AR 495.

14 With respect to whether the ALJ erred in evaluating the consistency of Dr.  
15 Morgan’s opinions, the ALJ’s decision recites that he considered whether the  
16 limitations that Dr. Morgan assessed were consistent with his mental status  
17 examination of Plaintiff. AR 27. Indeed, Dr. Morgan’s mental status examination  
18 form indicates all normal findings except a depressed mood. AR 496. In addition,  
19 the ALJ noted that Dr. Morgan was aware, based on Plaintiff’s self-report, only that  
20 Plaintiff had not had regular employment since 2018. AR 27. However, Plaintiff

1 worked for Asurion Insurance and Parker Staffing Services in the second and third  
2 quarters of 2019, less than six months before Dr. Morgan’s evaluation. AR 312.  
3 The ALJ did not find that Plaintiff’s short-term employment with these employers  
4 was “regular” employment or that Plaintiff denied that she engaged in irregular  
5 work; therefore, Plaintiff’s discussion of both matters is not on point in determining  
6 whether the ALJ erred. *See* ECF No. 10 at 10. Rather, the record supports both that  
7 Plaintiff was able to earn wages, albeit for approximately one month, proximate to  
8 her evaluation by Dr. Morgan, and, second, that Dr. Morgan did not indicate that he  
9 was aware of this fact. *See* 312, 322, 492–96. The ALJ considered the “most  
10 important” factors of consistency and supportability in evaluating Dr. Morgan’s  
11 opinions. *See* 20 C.F.R. § 404.1520c(b)(2). Consequently, the Court finds that the  
12 ALJ’s rejection of Dr. Morgan’s opinion that Plaintiff would be markedly limited in  
13 several daily work activities to be supported by substantial evidence.

14 **N.K. Marks, PhD and Aaron Burdge, PhD**

15 Dr. Marks completed a psychological evaluation of Plaintiff for DSHS on  
16 June 16, 2017. AR 870–75. Plaintiff argues that the ALJ erred in finding Dr.  
17 Marks’s opinion not persuasive because the ALJ “mischaracterized” Dr. Marks’s  
18 findings as normal, and, by contrast, Dr. Marks’s examination and clinical findings,  
19 as well as the longitudinal record, support Dr. Marks’s opinion. ECF No. 10 at 12–

1 13. Plaintiff further argues that Plaintiff’s “work attempts shall not be held against  
2 her,” as argued with respect to Dr. Morgan. *Id.* at 12. Correspondingly, Plaintiff  
3 argues that the ALJ erred in rejecting Dr. Burdge’s opinion confirming Dr. Marks’s  
4 functional assessment. *Id.* at 12.

5 The Commissioner responds that the ALJ reasonably concluded that these  
6 opinions were not adequately supported and were inconsistent with the record. ECF  
7 No. 14 at 16. The Commissioner further asserts that the ALJ may consider “any  
8 work activity,” including work that does not qualify as substantial gainful activity,”  
9 in assessing the consistency of a doctor’s opinion with other record evidence. *Id.*

10 Dr. Marks examined Plaintiff on June 16, 2017, and completed a  
11 psychological evaluation for DSHS. AR 870–75. Dr. Marks made clinical findings  
12 of symptoms placing Plaintiff in the severe range of depression and anxiety, and  
13 found that Plaintiff expressed symptoms of gender dysphoria. AR 872. Dr. Marks  
14 ultimately assessed marked to severe limitations in eight basic work activities and an  
15 overall moderate severity rating based on the combined impact of all diagnosed  
16 mental impairments. AR 873. Dr. Marks found Plaintiff markedly limited in her  
17 ability to ask simple questions, maintain appropriate behavior in a work setting,  
18 complete a normal workday/workweek, and set realistic goals and plan  
19 independently. AR 873.

1 The ALJ found that Dr. Marks's opinion "unpersuasive" as inconsistent with  
2 the medical record, Plaintiff's employment around the time of the evaluation, and  
3 Dr. Marks's own examination findings. AR 27.

4 The record supports that Plaintiff worked before and after Dr. Marks's  
5 evaluation, including at a substantial gainful activity level in 2018, as the ALJ found  
6 earlier in his decision. AR 20 (finding Plaintiff's earnings for the fourth quarter of  
7 2018 were over substantial gainful activity level) and 25. In addition, substantial  
8 evidence supports that Dr. Marks found Plaintiff to have abnormal thought processes  
9 and perceptions because Plaintiff reported to Dr. Marks that she saw shadows  
10 sometimes, and Dr. Marks noted Plaintiff's mood to be anxious but also calm. AR  
11 27, 874. All of Dr. Marks's other mental status examination findings were  
12 unremarkable or within normal limits. AR 874. The ALJ also noted that Plaintiff  
13 did not report to Dr. Morgan in the 2019 evaluation that she was seeing shadows or  
14 otherwise hallucinating. AR 27. These reasons all go to the consistency and  
15 supportability factors that ALJs must consider, and the ALJ cited to substantial  
16 evidence in the record. *See* 20 C.F.R. § 404.1520(c) (requiring ALJ to consider the  
17 amount of objective medical evidence and supporting explanations presented by the  
18 source). The Court does not find error in the ALJ's treatment of Dr. Marks's  
19 medical source opinion.

1 Dr. Burdge reviewed the evaluation report of Dr. Marks in July 2017, and  
2 assessed the same moderate and marked limitations. AR 876–79. The ALJ found:  
3 “Since Dr. Burdge did not actually evaluate the claimant, I find his opinion  
4 unpersuasive for the same reasons Dr. Marks’ opinion is not persuasive.” AR 27–  
5 28. As the Court already determined that the ALJ’s treatment of Dr. Marks’s  
6 opinion was free of error, the Court likewise finds that the ALJ’s treatment of Dr.  
7 Burdge’s opinion, which was based only on a review of Dr. Marks’s report, was not  
8 erroneous.

9 **Holly Petaja, PhD**

10 Plaintiff maintains that the ALJ made a harmful legal error in making no  
11 findings about Dr. Petaja’s opinions, rendered after completing a review of evidence  
12 and evaluation of Plaintiff on September 23, 2019. ECF No. 10 at 13–14.

13 The Commissioner responds that the ALJ did not need to explicitly and  
14 separately articulate that he was not persuaded by Dr. Petaja’s opinion because he  
15 “discussed Dr. Petaja’s opinion in conjunction with Dr. Morgan’s and found Dr.  
16 Morgan’s opinion not persuasive because it was inconsistent with Darling’s ability  
17 to work.” ECF No. 14 at 14–15. The Commissioner maintains that “this Court may  
18 infer that the ALJ was not persuaded by Dr. Petaja’s opinion for the same reason.”  
19 *Id.* at 15.

1 On September 23, 2019, Dr. Petaja reviewed the evaluation reports of Dr.  
2 Morgan and Dr. Marks for DSHS and concurred in the findings except that she  
3 opined that Plaintiff's impairments would have a duration of twelve months, with an  
4 onset date of September 19, 2019. AR 891.

5 The Court already found that the ALJ's discussion of Dr. Morgan's and Dr.  
6 Marks's opinions addressed the most important factors required by the  
7 administrative rules and was supported by substantial evidence. Dr. Petaja added a  
8 duration to limitations previously opined by Dr. Morgan but did not examine  
9 Plaintiff herself nor review any material beyond the evaluation reports produced by  
10 Dr. Morgan and Dr. Marks. AR 888. The Court already found no error in the ALJ's  
11 treatment of those medical sources' opinion regarding limitations, and there is no  
12 other basis to find that the ALJ erred with respect to Dr. Petaja. Dr. Petaja did not  
13 have an independent opinion of Plaintiff's limitations to either find persuasive or  
14 not. Therefore, the Court finds no error in the ALJ's treatment of Dr. Petaja.

15 Eugene Kester, MD and Jon Anderson, PhD

16 Plaintiff argues that the ALJ erred in failing to include any limitation on  
17 supervisor interaction in the RFC, "despite claiming to adopt" the psychologists'  
18 opinions that Plaintiff is limited to occasional interaction with supervisors (Dr.  
19 Kester) and limited to only brief and superficial interactions with coworkers and  
20



1 supervisors (Dr. Anderson). ECF No. 10 at 15 (citing AR 23, 27). Plaintiff also  
2 contends that the ALJ erred in failing to make any findings regarding the amount of  
3 time that Plaintiff would be off-task and unproductive. *Id.* at 15.

4 The Commissioner responds that the RFC adequately accounted for Dr.  
5 Kester’s and Dr. Anderson’s opinions, as the ALJ found Plaintiff capable of simple,  
6 routine tasks with a reasoning level of 2 or less and limited Plaintiff to work  
7 involving no interaction with the public and only occasional and superficial  
8 interactions with coworkers. ECF No. 14 at 11 (citing AR 23). The Commissioner  
9 contends that a supervisor is a type of coworker and that Plaintiff “fails to show  
10 that the addition of a limitation to brief and superficial contact with supervisors  
11 would have resulted in a different outcome.” *Id.* According to the Dictionary of  
12 Occupational Titles (“DOT”) the representative jobs that the ALJ identified,  
13 including warehouse worker, janitor, and industrial cleaner, do not require any social  
14 interaction beyond being able to accept instruction. *Id.* at 11–12 (citing DOT  
15 922.687-058, 381.687-018, and 919.687-014).

16 Dr. Kester assessed Plaintiff’s mental residual functional capacity on June 17,  
17 2020, and opined, in relevant part, that Plaintiff is “able to interact [occasionally  
18 with] the general public, co-workers [and supervisors].” AR 109. Dr. Anderson  
19 also assessed Plaintiff’s mental residual functional capacity, on September 10, 2020,

1 and opined, in relevant part, that “[o]verall the claimant is able to consistently carry  
2 out simple and well learned complex tasks that are independent of the [general  
3 public], brief interactions [with] coworkers.” AR 143.

4 The ALJ found Dr. Anderson’s opinion “substantially persuasive because it is  
5 generally consistent with the medical evidence of record.” AR 27. With respect to  
6 functional capacity, the ALJ noted that “Dr. Anderson stated that overall, the  
7 claimant was able to consistently carry out simple tasks and have brief interactions  
8 with coworkers in a low stress environment.” AR 26 (internal citation omitted).  
9 The ALJ did not discuss Dr. Kester’s opinion. The ALJ formulated the RFC to  
10 include as a limitation that Plaintiff’s work must involve “no interaction with the  
11 public and only occasional and superficial interaction with coworkers.” AR 23.

12 The Court finds no conflict between the RFC that the ALJ formulated and the  
13 ALJ’s treatment of Dr. Anderson’s opinion, and the ALJ’s implicit treatment of the  
14 analogous opinion from Dr. Kester. The RFC restricts Plaintiff to social interactions  
15 consistent with the limitations to which Dr. Kester and Dr. Anderson opined. AR  
16 23, 109, and 143. The Court also finds no basis for finding error based on Plaintiff’s  
17 bare assertion that the ALJ should have made findings regarding the amount of time  
18 that Plaintiff would be off-task and unproductive, without authority to support that  
19 such a failure would amount to erroneous treatment of these medical opinions. *See*

1 ECF No. 10 at 15. Therefore, the Court finds no error with respect to the opinions of  
2 Drs. Kester and Anderson.

3 Kristine McMurray, ARNP

4 Plaintiff argues that the ALJ erred in finding the opinions that Plaintiff's  
5 mental healthcare provider, Ms. McMurray, expressed in her February 12, 2021  
6 medical source statement "unpersuasive." ECF No. 10 at 16. Plaintiff asserts "As  
7 argued throughout, this is unsupported. Every mental health professional to evaluate  
8 [Plaintiff] or review the record assessed disabling limitations. Thus, the ALJ  
9 committed harmful legal error. When properly considered, [Plaintiff] is disabled."  
10 *Id.*

11 The Commissioner maintains that substantial evidence supports the ALJ's  
12 evaluation of Ms. McMurray's opinion as not consistent with the record. ECF No.  
13 14 at 16–17. The Commissioner adds that even if an alternative interpretation were  
14 possible, the ALJ reasonably assessed that other opinions were more persuasive than  
15 Ms. McMurray's, and that Ms. McMurray's opinion was inconsistent with treatment  
16 notes that preceded it. *Id.* at 17.

17 On February 12, 2021, Ms. McMurray opined in a medical source statement  
18 that Plaintiff is markedly to severely limited in eight basic work activities; Plaintiff  
19 suffers marked limitations in all "B" criteria; Plaintiff meets the "C" criteria of the

1 mental Listings; Plaintiff would be off task and unproductive over 30 percent of a  
2 40-hour weekly schedule; and Plaintiff would miss 4 or more days per  
3 Month. AR 1226–29.

4 The ALJ found:

5 The opinion of Kristine McMurray, ARNP, in Exhibit 32F is  
6 unpersuasive because the medical evidence of record does not support  
7 the severity rating. Ms. McMurray opined severe limitation in the  
8 claimant’s ability to perform activities within a schedule, maintain  
9 regular attendance, and be punctual; work in coordination with others;  
10 complete a normal workday/workweek; accept instructions and  
11 criticism from supervisors; get along with co-workers or peers;  
maintain socially appropriate behavior; travel to unfamiliar places or  
use public transportation; and set realistic goals. Ms. McMurray opined  
the claimant markedly limited in all four “paragraph B” criteria, the  
claimant meets the “paragraph C” criteria, and that the claimant miss  
four or more days of work per month due to symptoms.

12 AR 28.

13 In evaluating the supportability and consistency of Ms. McMurray’s opinions,  
14 the ALJ found that medical evidence conflicted with the severity to which Ms.  
15 McMurray opined. AR 28. Indeed, substantial evidence supports that Plaintiff  
16 demonstrated improvement and normal mental status examinations in the months  
17 preceding Ms. McMurray’s statement. *See* AR 747, 892–94, 950, and 1113–14.  
18 The Court does not find error in the ALJ’s treatment of Ms. McMurray’s medical  
19 source opinions.

20 / / /

1           ***Step Three***

2           Plaintiff asserts that the ALJ erred by “failing to address the paragraph ‘C’  
3 criteria and failing to adequately interpret the paragraph ‘B’ criteria is [sic] asserting  
4 that the objective evidence supported nothing more than moderate limitations.” ECF  
5 No. 10 at 3; *see also id.* at 16–17. Plaintiff argues that Plaintiff’s treatment provider,  
6 Lori Williams, LMHC, summarized Plaintiff has having “a history of depression  
7 with psychotic features and anxiety” and “[r]ecent symptoms include having trouble  
8 sleeping, trouble turning her mind off at night, she has little appetite, she has  
9 frequent shifts in mood, she has panic attacks, she has trouble with concentration,  
10 she is having visual and auditory hallucinations and is having difficulty dealing with  
11 her emotions of transitioning from a male to a female.” *Id.* at 17 (citing AR 1078).  
12 Plaintiff also quotes Ms. Williams as observing that Plaintiff presented with a broad  
13 mood and affect. *Id.* Furthermore, Plaintiff maintains that the record “documents  
14 instances of suicidal ideation . . . tending to support affirmation of the paragraph ‘C’  
15 criteria and a determination of disabled.” *Id.*

16           The Commissioner responds that the ALJ reasonably determined that  
17 Plaintiff’s impairments did not satisfy the requisite criteria of Listings 12.04, 12.06,  
18 12.08, or 12.15. ECF No. 14 at 3–4. The Commissioner maintains that presenting  
19 with a broad mood and affect to a mental health counselor does not show that

1 Plaintiff “had marked or extreme limitations in any of the paragraph B criteria.” *Id.*  
2 at 5. With respect to paragraph C, the Commissioner maintains that Plaintiff does  
3 not explain how suicidal ideation satisfies either of the two requirements of  
4 paragraph C, “evidence of (1) medical treatment, mental health therapy,  
5 psychosocial support, or a highly structured setting that is ongoing and that  
6 diminishes the symptoms and signs of the claimant’s mental disorder; and (2)  
7 marginal adjustment, meaning the claimant has minimal capacity to adapt to changes  
8 in his or her environment or to demands that are not already part of the claimant’s  
9 daily life.” *Id.* at 5–6 (citing 20 C.F.R. Part 404, Subpart P, App. 1, 12.04C, 12.06C,  
10 12.15C). Moreover, the Commissioner argues that even if the Court were to find  
11 that the ALJ erred at step three, Plaintiff has not shown that her impairments  
12 satisfied all of the requirements of any of the relevant listings. *Id.* at 6.

13 At step three, the ALJ considers whether one or more of a claimant’s  
14 impairments meet or medically equal an impairment listed in Appendix 1 to Subpart  
15 P of the regulations. Plaintiff bears the burden of proof at step three. *Bowen v.*  
16 *Yuckert*, 482 U.S. 137, 146 n.5 (1987). “To equal a listed impairment, a claimant  
17 must establish symptoms, signs and laboratory findings ‘at least equal in severity  
18 and duration’ to the characteristics of a relevant listed impairment[.]” *Tackett v.*  
19 *Apfel*, 180 F.3d 1094, 1099 (9th Cir. 1999); § 416.926 (a).

1           The ALJ found at step three that Plaintiff's limitations did not satisfy the  
2 paragraph B criteria for listings 12.04, 12.06, 12.08, and 12.15 because the  
3 impairments do not cause at least two "marked" limitations or one "extreme"  
4 limitation. AR 21–23. In assessing whether Plaintiff satisfied the criteria for a  
5 listing, the ALJ found only mild and moderate functional limitations. AR 21–23.  
6 The ALJ noted that Plaintiff had told the consultative psychologist that she had a  
7 history of suicidal ideation. AR 23. The ALJ did not discuss paragraph C criteria.  
8 *See* AR 21–23.

9           To satisfy Paragraph C, a claimant must have a mental disorder that is  
10 "serious and persistent," meaning the claimant has a medically documented history  
11 of the existence of the disorder over a period of at least two years, and there is  
12 evidence of both (1) medical treatment, mental health therapy, psychosocial  
13 support(s), or a highly structured setting(s) that is ongoing and that diminishes the  
14 symptoms and signs of the claimant's mental disorder; and (2) marginal  
15 adjustment, that is, the claimant has minimal capacity to adapt to changes in her  
16 environment or to demands that are not already part of the claimant's daily life. 20  
17 C.F.R. Part 404, Subpart P, App. 1, 12.04C, 12.06C, 12.15C.

18           Plaintiff does not show that any history of suicidal ideation, her mental health  
19 counselor's summary of Plaintiff's mental health history and symptoms, or her  
20

1 mental health counselor’s observation that Plaintiff presented with a “broad mood  
2 and affect” required the ALJ to find that Plaintiff satisfies the criteria of either  
3 Paragraph B or C. Therefore, any error for failing to discuss paragraph C for the  
4 relevant listings is harmless, and the Court denies Plaintiff summary judgment on  
5 this basis. The Court grants summary judgment to the Commissioner with respect to  
6 the ALJ’s step three assessment.

7 ***Subjective Symptom Testimony***

8 Plaintiff argues that the ALJ did not provide the requisite clear and convincing  
9 reasons for making a negative credibility finding. ECF No. 10 at 18. Plaintiff  
10 continues that “the ALJ did nothing more than reject [Plaintiff’s] disabling  
11 complaints on the basis of waxing and waning symptoms.” *Id.*

12 The Commissioner responds that, “[h]ere, [Plaintiff] was diagnosed with  
13 malingering, meaning the ALJ could reject her testimony without analysis.” ECF  
14 No. 14 at 3 (citing AR 1216).

15 To reject a claimant’s subjective complaints, the ALJ must provide “specific,  
16 cogent reasons for the disbelief.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)  
17 (internal citation omitted). The ALJ “must identify what testimony is not credible  
18 and what evidence undermines the claimant’s complaints.” *Id.* Subjective symptom  
19 evaluation is “not an examination of an individual’s character,” and an ALJ must



1 consider all of the evidence in an individual's record when evaluating the intensity  
2 and persistence of symptoms. *See* SSR 16-3p, 2016 SSR LEXIS 4 (2016).

3 In deciding whether to accept a claimant's subjective pain or symptom  
4 testimony, an ALJ must perform a two-step analysis. *Smolen v. Chater*, 80 F.3d  
5 1273, 1281 (9th Cir. 1996). First, the ALJ must evaluate "whether the claimant has  
6 presented objective medical evidence of an underlying impairment 'which could  
7 reasonably be expected to produce the pain or other symptoms alleged.'"  
8 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v.*  
9 *Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). Second, if the first test is met and there  
10 is no evidence of malingering, "the ALJ can reject the claimant's testimony about  
11 the severity of her symptoms only by offering specific, clear and convincing reasons  
12 for doing so." *Smolen*, 80 F.3d at 1281.

13 Moreover, a finding of malingering is sufficient to support an ALJ's rejection  
14 of a claimant's subjective reports. *See Benton v. Barnhart*, 331 F.3d 1030, 1040 (9th  
15 Cir. 2003). The ALJ noted that there was a diagnosis of malingering when Plaintiff  
16 was hospitalized for three days in April 2016. AR 24 (citing AR 1215–16). The  
17 ALJ further reviewed Plaintiff's treatment record and cited to the materials  
18 indicating that Plaintiff's condition had improved through 2019 and 2020 and that  
19 she has presented to medical providers with her mood, affect, thought processes,

1 and/or behavior within normal limits, even while self-reporting suicidal thoughts.  
2 AR 25–26 (citing AR 451, 479, 483, 485, 547, 554, 558, 564, 644, 646, 747, 772–  
3 73, 840, 894, 963, 976, 995, 1032, 1068–70, 1084, 1095, 1097, 1099, 1112–13,  
4 1179, and 1191). The ALJ also noted that multiple providers diagnosed Plaintiff  
5 with moderate, rather than severe, depression. *Id.*

6 The ALJ relied on substantial evidence in interpreting the medical record and  
7 in determining that there was a prior diagnosis of malingering. Therefore, the ALJ  
8 offered legally sufficient rationale for discounting Plaintiff’s subjective complaints.  
9 The Court grants summary judgment to the Commissioner on this issue and denies  
10 Plaintiff’s Motion for Summary Judgment in relevant part.

11 ***Step Five***

12 Plaintiff contends that the ALJ erred at Step Five “by finding the claimant not  
13 disabled despite overwhelming medical and vocational evidence to the contrary.”  
14 ECF No. 10 at 8.

15 However, having found no error in the ALJ’s treatment of the medical  
16 opinions and Plaintiff’s subjective symptom testimony, as described above, the  
17 Court correspondingly finds no step-five error. The Court denies Plaintiff’s Motion  
18 for Summary Judgment on this final ground.

1 The Court finds no error in the ALJ's determination that Plaintiff was not  
2 under a disability during the relevant time period. Accordingly, the Court grants  
3 summary judgment to the Commissioner and denies Plaintiff's request for summary  
4 judgment in her favor.

5 **IT IS HEREBY ORDERED** that:

6 1. Plaintiff's Motion for Summary Judgment, **ECF No. 10**, is **DENIED**.

7 2. Defendant's Motion for Summary Judgment, **ECF No. 14**, is

8 **GRANTED**.

9 3. Judgment shall be entered in favor of Defendant.

10 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
11 Order, enter judgment as directed, provide copies to counsel, and **close this case**.

12 **DATED** June 8, 2022.

13  
14 *s/ Rosanna Malouf Peterson*  
15 ROSANNA MALOUF PETERSON  
16 Senior United States District Judge  
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